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No. 01-184

In the Supreme Court of the United States

BLUE DIAMOND COAL COMPANY,
Petitioner,
v.
LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY,
AND
MICHAEL H. HOLLAND, WILLIAM P. HOBGOOD, MARTY D. HUDSON, THOMAS O.S. RAND, ELLIOT A. SEGAL, CARL E. VAN HORN, GAIL R. WILENSKY, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly ruled that the district court abused its discretion in granting petitioner's motion to reopen a four-year-old final judgment under Fed. R. Civ. P. 60(b)(6), where:

(a) petitioner sought relief solely on the basis of this Court's decision in Eastern Enterprises v. Apfel, 524 U.S. 498 (1998);

(b) the judgment at issue has no prospective effect;

(c) the purpose of petitioner's motion was solely to recover monies previously paid by petitioner and already used to provide health care to petitioner's retirees and their dependents; and

(d) petitioner voluntarily elected to forgo full pursuit of its appellate remedies, by abandoning any argument under the Due Process Clause in its previous petition for a writ of certiorari.

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BRIEF FOR THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 249 F.3d 519. The opinion of the district court (Pet. App. 19a-29a) is unreported. The earlier decision of the district court (Pet. App. 30a-48a) is reported at 174 B.R. 722. The earlier opinion of the court of appeals is reported at 79 F.3d 516.

FEDERAL RULE OF CIVIL PROCEDURE INVOLVED

Fed. R. Civ. P. 60(b)(6) provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment.

STATEMENT OF THE CASE

A. Historical Background

In October 1992, Congress enacted the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 et seq. and 30 U.S.C. § 1232(h) (the "Coal Act"), to ensure the continuation of health benefits for retired coal miners and their families. Many of the retired miners covered by the statute had been employed by petitioner Blue Diamond Coal Company ("Blue Diamond"). For nearly three decades before enactment of the statute, such retirees and their eligible dependents had received health benefits from the collectively bargained UMWA multiemployer health care system, even though Blue Diamond itself ceased all contributions to the system in 1964.

The Coal Act was passed to remedy a financial crisis that threatened the solvency of the collectively bargained UMWA multiemployer system, which, by the time Congress acted, was providing health benefits to more than 100,000 beneficiaries. The history of this financial crisis and the events leading to enactment of the Coal Act have been reviewed at some length by this Court and several federal courts of appeals. Eastern Enterprises v. Apfel, 524 U.S. 498, 504-15 (1998) (plurality opinion); Unity Real Estate Co. v. Holland, 178 F.3d

649 (3d Cir.), cert. denied, 528 U.S. 963 (1999); In re Blue Diamond Coal, Co. (Blue Diamond Coal Co. v. Shalala), 79 F.3d 516 (6th Cir. 1996), cert. denied, 519 U.S. 1055 (1997); Lindsey Coal Mining Co. v. Chater, 90 F.3d 688 (3d Cir. 1996); Holland v. Keenan Trucking Co., 102 F.3d 786 (4th Cir. 1996); Carbon Fuel Co. v. USX Corp., 100 F.3d 1124 (4th Cir. 1996); Davon Inc. v. Shalala, 75 F.3d 1114 (7th Cir.), cert. denied, 519 U.S. 808 (1996); In re Chateaugay Corp. (LTV Steel Co. v. Shalala), 53 F.3d 478 (2d Cir.), cert. denied, 516 U.S. 913 (1995); Barrick Gold Exploration, Inc. v. Hudson, 47 F.3d 832 (6th Cir.), cert. denied, 513 U.S. 813 (1995).

Given this extensive precedent, we do not rehearse here the nearly 50 years of collective bargaining history that eventually led to enactment of the Coal Act. For present purposes, it suffices to observe that Congress provided in the statute for the creation of two new statutory trust funds. One of these funds, the UMWA Combined Benefit Fund (the "Combined Fund"), is at issue in this case. Congress directed that the two pre-existing collectively bargained multiemployer health care plans -- the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan -- be merged into the Combined Fund as of February 1, 1993. Under Section 9706 of the Coal Act, individual beneficiaries of the Combined Fund then were assigned to specific former employers (or to related persons to such employers) under the statutory criteria prescribed by Congress.[1/] 26 U.S.C. § 9706. The employers receiving such

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1/Originally, the Coal Act provided that the Secretary of Health and Human Services would perform the assignment of Combined Fund beneficiaries. The Secretary delegated this task to the Commissioner of Social Security. Thereafter, in 1994, Congress transferred the statutory responsibility directly to the Commissioner. See Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§

assignments were (and are) required to pay annual premiums to the Combined Fund to finance the assigned beneficiaries' health care.

B. Proceedings in the Courts Below

On May 24, 1993, less than four months after the Combined Fund began providing health benefits and well before any Combined Fund beneficiaries were assigned or annual premiums assessed, Blue Diamond filed suit against the Trustees of the Combined Fund and the Secretary of Health and Human Services, claiming that the Coal Act, as applied to Blue Diamond, violated the Due Process and Takings Clauses of the Fifth Amendment. The parties cross-moved for summary judgment.

The district court, like the three other federal courts that previously had ruled on the constitutionality of the Coal Act, granted summary judgment in favor of the Secretary and the Trustees. Pet. App. 30a-48a. The court of appeals affirmed. 79 F.3d 516 (6th Cir. 1996).

Blue Diamond petitioned this Court for a writ of certiorari. Although Blue Diamond had argued in both the district court and the court of appeals that the Coal Act as applied to it violated the Due Process Clause and the Takings Clause of the Fifth Amendment, Blue Diamond abandoned its due process challenge in this Court and sought review only on its takings theory. This Court denied Blue Diamond's petition. 515 U.S. 1055 (1997).

A year and a half later, this Court issued its divided decision in Eastern. A plurality of four Justices concluded that

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105(a)(2)(A), 108(h)(9)(A), 108 Stat. 1472, 1487-88 (1994).

the Coal Act, as applied to Eastern, effected an unconstitutional taking. 524 U.S. at 529-37. Justice Kennedy determined that the Takings Clause does not provide the appropriate basis for review of economic regulatory legislation like the Coal Act. In that regard, he agreed with the four dissenting Justices. Justice Kennedy also concluded, however, that, as applied to Eastern, the Coal Act violated the Due Process Clause. Id. at 547-50 (Kennedy, J., concurring in the judgment and dissenting in part). The plurality declined to reach the due process issue, but observed that the Court previously "has expressed concerns about using the Due Process Clause to invalidate economic legislation." Id. at 537.

On August 28, 1998, two months after this Court decided Eastern, Blue Diamond moved to vacate the district court's four-year-old final judgment. Blue Diamond claimed that there were "extraordinary circumstances" justifying relief under Rule 60(b)(6). The Trustees and the Commissioner opposed the motion.

While Blue Diamond's motion was pending, the Commissioner notified coal companies that were similarly situated to Eastern, including Blue Diamond, that their assignments of Combined Fund beneficiaries under the Coal Act were void. As a result, Blue Diamond discontinued all premium payments to the Combined Fund. Indeed, Blue Diamond has not made, and the Combined Fund has not sought from Blue Diamond, any premium payments since June 1998, when Eastern was decided. Blue Diamond has no future obligation to pay health care premiums to the Combined Fund. Consequently, by the time briefing of Blue Diamond's motion to vacate the judgment was completed in the district court, it was clear that the November 1994 judgment would have no prospective effect and that Blue Diamond's sole purpose in pursuing its motion was to demand a refund of premiums

previously paid under the statute and already used to provide health benefits to Blue Diamond's retirees and their families.

On November 4, 1998, the district court granted Blue Diamond's motion, vacated the final judgment, and restored the case to the court's active docket for further proceedings. Pet. App. 21a-29a. The district court acknowledged that subsequent changes in decisional law do not provide the "exceptional or extraordinary circumstances" needed to justify relief under Rule 60(b)(6). Id. at 24a, 26a. The court also acknowledged that Blue Diamond sought only to recover past monies paid and not any prospective relief. Id. at 25a. Nonetheless, the court ruled that it would be "unfair" to allow the previous judgment to stand. Id. at 28a. Although the court recognized that the Coal Act is neither an "accident" or a single contractual transaction, it relied heavily on a handful of cases in which courts have invoked Rule 60(b) to harmonize the legal outcome for victims of the same accident. The court stated that one could argue that the coal companies affected by Eastern were "part of the same transaction." Id.

The Trustees moved to certify the district court's order for interlocutory appeal under 28 U.S.C. § 1292(b). The district court granted that motion, and the court of appeals agreed to hear the interlocutory appeal. Pet. App. 6a.

After full briefing and argument, the court of appeals reversed. Citing its earlier decision in Olle v. Henry & Wright Corp., 910 F.2d 357, 365 (6th Cir. 1990), and this Court's ruling in Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 863-64 (1988), the court explained that Rule 60(b)(6) relief is available "only in 'unusual and extreme situations where principles of equity mandate relief.'" Pet. App. 8a. The court further observed that "a change in decisional law is usually not, by itself, an extraordinary circumstance meriting Rule 60(b(6) relief." Id.

The court of appeals rejected the district court's reliance on the "same accident" or "same transaction" line of cases. Pet. App. 9a-13a. The court explained that most such cases involved situations in which a federal court sitting in diversity and a state court have come to opposite conclusions as to the application of state law to an individual set of facts. Id. at 11a. The cases thus implicated the rule under Erie R.R. v. Tompkins, 304 U.S. 64 (1938), that state law should be "outcome-determinative" in diversity cases. No such considerations are present here. Moreover, the court of appeals said, the cases cited by Blue Diamond and the district court "involve[d] transactions with a much tighter nexus of common activity, common rights, and common liability than a law passed by Congress to regulate the payment of medical health benefits to the retirees of an entire industry." Pet. App. 11a. The court declined to treat a federal regulatory statute as if it were a single commercial transaction, explaining that such an approach would mean that any company in an industry subject to extensive federal regulation would be able to claim Rule 60(b)(6) relief whenever judicial interpretation of the applicable law changed. Id. at 12a.

In weighing the equities, the court of appeals found that the district court was simply wrong in thinking that Blue Diamond is the only company whose Combined Fund beneficiary assignments were declared void and that did not receive a refund of amounts previously paid to the Combined Fund. In fact, as the court of appeals recognized, there are at least 13 such companies, including Blue Diamond, that did not receive refunds from the Combined Fund "due to a pre-Eastern Enterprises final judgment or settlement." Pet. App. 14a. The court of appeals concluded that the strong interest in finality of judgments, coupled with the Combined Fund's reliance on the judgment entered in this case and its use of Blue Diamond's past premiums to pay for health care for Blue Diamond's

retirees and their dependents, militated heavily in favor of adhering to the original judgment. Id. at 17a.

ARGUMENT

The court of appeals applied the well-established legal standards governing relief under Rule 60(b)(6), and it did so with proper regard for the principles of finality and equity at issue here. The court reached the same result as federal courts have reached in all of the other cases in which companies have sought to reopen final judgments for the sole purpose of obtaining retrospective monetary relief after unsuccessful challenges to the Coal Act. See Holland v. Virginia Lee Co., 188 F.R.D. 241 (W.D. Va. 1999); Coltec Indus., Inc. v. Hobgood, 184 F.R.D. 60 (W.D. Pa. 1999), appeals pending, Nos. 00-2458 and 00-4385 (3d Cir. argued Sept. 19, 2001); Lindsey Coal Mining Co. Liquidating Trust v. Apfel, No. 94-143 (W.D. Pa. 1999); Templeton Coal Co. v. Apfel, No. TH 93-158-C-T/H (S.D. Ind. 1999).[2/] Like these other rulings, the court of appeals' decision here is correct, and further review is not warranted.

Contrary to petitioner's assertion, this case presents no unsettled question of federal law and no conflict with prior decisions. Rather, petitioner is attempting to use Rule 60(b)(6) as a means of avoiding the past financial consequences of its own voluntary litigation choices. As federal courts routinely have held, that does not constitute the sort of exceptional or extraordinary circumstance needed to justify relief under Rule 60(b)(6). Petitioner has been treated identically with all other assigned operators under the Coal Act whose beneficiary assignments were declared void after Eastern but who

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2/The unreported decisions in Lindsey and Templeton are reproduced as an appendix to this brief.

previously had unsuccessfully pursued to final judgment their own constitutional challenges to the statute. There is no basis for retrospectively disturbing these results.

Petitioner's protestations of unfairness are misguided. Petitioner voluntarily chose its own litigation strategy. It elected to file one of the first actions challenging the Coal Act. It filed its complaint even before it had been assigned any Combined Fund beneficiaries or assessed any Coal Act premiums. It selected its forum, its counsel, and its legal arguments for attacking the statute. It forced the government and the Trustees to defend against its action in the district court, the court of appeals, and this Court. Not surprisingly, Blue Diamond's litigation choices, like those of any other litigant, have real-world consequences. They involve both risk and reward. Litigation must end at some point, and final judgments should remain final, even (perhaps especially) in cases involving constitutional claims. If final judgments could be reopened whenever a higher court later reached a different result in another case, no judgment would ever be anything more than a tentative outcome, and no prevailing party could ever rely on a favorable ruling.

Blue Diamond's claims of inequity blithely ignore the real-world consequences of permitting Blue Diamond now to revisit legal strategies that it wishes it had not adopted several years ago. If Blue Diamond had its way, the extensive litigation costs imposed on the government and the Combined Fund's beneficiaries by Blue Diamond's 1993 action would count for naught. The federal courts' adjudication of Blue Diamond's claims would be rendered a nullity. Moreover, according to Blue Diamond, premium payments that the Combined Fund long ago used to provide health benefits to Blue Diamond's retirees and their families now should be refunded to Blue Diamond. The inevitable result would be that other coal companies would be subjected to additional assessments (over

and above the supplemental assessments already imposed as a result of refunds after Eastern), and additional demands would be placed on limited public funds (namely, the interest earned by the Abandoned Mine Land Reclamation Fund (the "AML Fund") established under the Surface Mining Control and Reclamation Act of 1977). See 30 U.S.C. § 1232(h).

The fundamental flaw in Blue Diamond's equitable arguments is that they fail to recognize that Blue Diamond is not in fact similarly situated to the other coal operators to which Blue Diamond seeks to compare itself. Unlike those other companies, Blue Diamond and several other signatories to pre-1974 coal wage agreements unsuccessfully litigated to a conclusion their constitutional challenges to the Coal Act before Eastern. All of these similarly situated "final judgment" companies have been treated alike. Equity requires no more.

A. Blue Diamond's Position Is Contrary to Substantial Authority From This Court and Other Federal Courts That Rule 60(b)(6) Does Not Permit Unsuccessful Parties To Relitigate Their Claims Following a Change in Decisional Law.

The question for which Blue Diamond seeks review is not in fact presented by this case. Blue Diamond asks (Pet. i) whether Rule 60(b)(6) grants federal district courts discretion to reopen judgments in certain circumstances. That point is not disputed; the court of appeals ruled that, although Rule 60(b)(6) does give district courts discretionary authority to reopen judgments in exceptional or extraordinary circumstances, the district court abused that discretion in granting Blue Diamond's motion in this case. Pet. App. 7a-8a, 18a. That decision is fully supported by the relevant authorities.

One of the primary purposes of the federal courts is "the conclusive resolution of disputes within their jurisdiction."

Montana v. United States, 440 U.S. 147, 153 (1979). Because of the strong interest in the finality of judgments, the Federal Rules allow such judgments to be revisited only in very limited circumstances. Courts uniformly hold that Rule 60(b)(6) is to be invoked only in exceptional or extraordinary cases. Liljeberg v. Health Services Corp., 486 U.S. 847, 864 (1988); Marquip, Inc. v. Fosber America, Inc., 198 F.3d 1363, 1370 (Fed. Cir. 1999); Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989). As this Court said more than fifty years ago, "[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." Ackermann v. United States, 340 U.S. 193, 198 (1950).

This Court and others repeatedly have held that "[i]ntervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." Agostini v. Felton, 521 U.S. 203, 239 (1997). Accord, Cincinnati Ins. Co. v. Flanders Elect. Motor Services, Inc., 131 F.3d 625, 628 (7th Cir. 1997) ("Generally, a change in state decisional law is insufficient to constitute an extraordinary circumstance warranting relief under Rule 60(b)."); Biggins v. Hazen Paper Co., 111 F.3d 205, 212 (1st Cir.), cert. denied, 522 U.S. 952 (1997) ("absent extraordinary circumstances, we would think it dubious practice to reopen a final judgment under Rule 60(b)(6) solely because of later precedent pointing in a different direction."); DeWeerth v. Baldinger, 38 F.3d 1266, 1272-73 (2d Cir.), cert. denied, 513 U.S. 1001 (1994) (subsequent case law demonstrating that prior judgment was based on an erroneous interpretation of law was not proper grounds for reopening a four-year-old judgment); Berryhill v. United States, 199 F.2d 217, 219 (6th Cir. 1952) ("a change in the judicial view of the applicable law, after a final

judgment, is not a basis for vacating a judgment entered before announcement of the change.").[3]

This rule applies with equal force in cases raising constitutional claims. For example, in Collins v. City of Wichita, 254 F.2d 837 (10th Cir. 1958), the plaintiff challenged the constitutionality of the notice provisions of a condemnation statute. Like Blue Diamond, the plaintiff lost in the trial court and lost on appeal. In a later case involving the same statute, this Court held that the notice provisions of the statute were unconstitutional. As in this case, the plaintiff moved to vacate the judgment in light of this Court's decision. The district court denied plaintiff's motion for Rule 60(b)(6) relief, and the Tenth Circuit affirmed, explaining that "[l]itigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry,

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3/See also Dowell v. State Farm Fire & Casualty Automobile Ins. Co., 993 F.2d 46, 48 (4th Cir. 1993) ("a change in decisional law subsequent to a final judgment provides no basis for relief under Rule 60(b)(6)"); Bailey v. Ryan Stevedoring Co., Inc., 894 F.2d 157, 160 (5th Cir.), cert. denied, 498 U.S. 829 (1990) ("Rule 60(b) does not give the right to reopen litigation finally concluded over two years previously on the grounds of a change in the law"); Carter v. Romines, 593 F.2d 823, 824 (8th Cir. 1979) ("Our affirmance of the district court's dismissal of Carter's complaint, coupled with the Supreme Court's denial of certiorari, barred Carter from returning to the district court to reargue the issues resolved against him"; this "rule is unaffected even if . . . a change in the law occurred after the judgment was affirmed on appeal.").

does not justify setting it aside." Id. at 839.[4] See also DeWeerth, 38 F.3d at 1273 (the principle that a change in decisional law does not warrant Rule 60(b)(6) relief "also applies in federal cases where the Supreme Court has changed the applicable rule of law."); Usery v. Bd. of Regents for Okla. Agric. & Mech. Colleges, 22 Fed. R. Serv. 2d 1474 (E.D. Okla. 1976) (subsequent decision declaring unconstitutional the provisions of the Fair Labor Standards Act on which consent judgment was issued did not provide sufficient grounds for granting Rule 60(b)(6) relief with respect to the executed damage provisions of that judgment); Marshall v. Board of Education, 575 F.2d 417, 425 (3d Cir. 1978) (holding, even after this Court declared the FLSA unconstitutional as applied to state entities, that "a judgment at law for damages for past wrongs is inherently final and remains unaffected by a subsequent change in the law.") (internal quotation and citations omitted).[5]

4/Blue Diamond tries to distinguish Collins by arguing that the result here is more "unfair" than the outcome in Collins. As already explained, however, there is nothing at all unfair about recognizing the finality of the judgment against Blue Diamond in the circumstances of this case. Moreover, Blue Diamond's assertion that the plaintiffs in Collins had received just compensation for their property by the time of the court's decision is not correct. The court of appeals simply observed that litigation was continuing regarding these matters. No compensation had been provided, and there is no indication that the plaintiffs believed that any amount they would receive would be "just." Collins, 254 F.2d at 839 n.2.

5/Blue Diamond cites 12 J.W. Moore, Moore's Federal Practice § 60.48[5][b], at 60-181 to 60-182.1 (3d ed. 1997), for the proposition that Rule 60(b)(6) relief "would make 'perfect sense' to remedy divergent judgments on the constitutionality

Blue Diamond nevertheless attempts to distinguish between "a change in decisional law and this Court's invalidation of a statute under the Constitution." Pet. 13. According to Blue Diamond, when this Court declares a statute unconstitutional, the statute is stripped of all legal effect and must be regarded as if it were never a law at all. From this premise, Blue Diamond argues that any actions taken in reliance on such a statute must be undone.

But this is not the way courts treat invalidated legislation. Indeed, this Court expressly has rejected such an approach. In Chicot Co. Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940), the Court considered the effects of its decision declaring a statute unconstitutional. Specifically, the Court held that:

> broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. . . . Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon

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of a single statute" after this Court has ruled on the statute. Pet. 15. Although the treatise does state that a change in decisional law may be considered on a Rule 60(b)(6) motion in a case involving the same statute, it also emphasizes that this is but one factor to consider and that "[t]here are few decisions that permit relief from a judgment under Rule 60(b)(6) when there is a change in decisional law after final judgment." Id. § 60.48[5][c], at 60-183.

> accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. . . . [I]t is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Id. at 374 (emphasis added).

More recently, in James B. Beam Distilling Co. v. Georgia, 501 U.S. 529 (1991), the Court revisited the question whether the invalidation of a statute operates automatically to invalidate acts that previously have become final and settled under the statute. Announcing the judgment of the Court, Justice Souter explained:

> Of course, retroactivity in civil cases must be limited by the need for finality; once a suit is barred by res judicata or by statutes of limitation or repose, a new rule cannot reopen the door already closed.
>
> * * *
>
> Insofar as equality drives us, it might be argued that the new rule should be applied to those who had toiled and failed, but whose claims are now precluded by res judicata; and that it should not be applied to those who only exploit others' efforts by litigating in the new rule's wake.
>
> * * *
>
> While those whose claims have been adjudicated may seek equality, a second chance for them could only be purchased at the expense

> of another principle. "'Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of that contest, and that matters once tried shall be considered forever settled as between the parties.'"

Id. at 541-42 (opinion of Souter, J., joined by Stevens, J., announcing the judgment of the Court) (citations omitted) (emphasis added).[6/]

Thus, contrary to Blue Diamond's claim, this Court has definitively addressed the issue of reopening final judgments following a change in the law, and the fact that this case involves a constitutional issue does not affect the Court's reasoning. As the court of appeals explained, "our system of law does not privilege certain rights, constitutional or not, over others." Pet. App. 13a (citing Butz v. Economou, 438 U.S. 478, 523 (1978) (Rehnquist, J., concurring in part and dissenting in part) ("That the Framers thought some rights sufficiently susceptible of legislative derogation that they should be enshrined in the Constitution does not necessarily indicate that the Framers likewise intended to establish an immutable hierarchy of rights in terms of their importance to individuals.").

6/Even in the criminal context where an individual's freedom is at stake, this Court has held that judgments are not to be reopened based on new rules of constitutional law. See Teague v. Lane, 489 U.S. 288 (1989) (new rules in criminal cases will not relate back to convictions challenged in habeas corpus proceedings).

B. Rule 60(b)(6) Does Not Permit Parties to Relieve Themselves of Their Free and Deliberate Litigation Choices.

Blue Diamond claims that "as one of the first litigants" to challenge the Coal Act, it is being treated unfairly "for no better reason than [that] it raised" its constitutional objections in the first place. Pet. 7. Blue Diamond asserts that, unless the district court's November 1994 judgment is reopened, the constitutional rights of litigants like Blue Diamond will become "sacrificial offerings gathered by the federal judicial system". Id. at 10. This is nonsense.

Shortly after the passage of the Coal Act, Blue Diamond made a deliberate, strategic choice to initiate litigation against the Combined Fund and HHS. Rather than sit on the sidelines while other companies tested the constitutional waters, Blue Diamond made a calculated decision to be one of the first companies to file suit. As a result of that decision, Blue Diamond was able to frame the arguments as it saw fit. Because it was one of the first companies to sue, Blue Diamond was able to develop its legal strategy without concern for earlier decisions addressing the validity of the Coal Act. Moreover, Blue Diamond was able to engage in early discovery and to require the Combined Fund and the government to commit to their litigating positions early, without the benefit of prior briefing and rulings under the Act and without additional time to develop their arguments.

Blue Diamond selected its home forum (the Eastern District of Tennessee) for its Coal Act challenge. It also selected counsel and the precise timing of its action. Rather than withholding premiums and waiting until the Combined Fund demanded payment, Blue Diamond chose of its own accord to initiate an adversary proceeding in bankruptcy court. The Combined Fund was forced to expend its own resources

first to withdraw the proceeding to district court (a motion that Blue Diamond opposed) and then to defend the suit. Had it not been for Blue Diamond's action, this money could have been used to provide health benefits for the thousands of Combined Fund beneficiaries.

But Blue Diamond's decision to file suit early also had a downside, namely, that its case would be one of the first decided, and one of the first to proceed to final judgment. With the benefit of hindsight, Blue Diamond now wishes that it had waited to pursue its constitutional claims, so that it could capitalize on another coal operator's victory. That does not mean, however, that there is anything "arbitrary" about holding Blue Diamond to the result of its own litigation, with respect to sums already paid to and used by the Combined Fund. See James B. Beam, 501 U.S. at 541 (opinion of Souter, J., announcing the judgment of the Court) (not "arbitrary" to distinguish between early litigant who files suit and loses, and later litigant who enjoys benefit of new rule).

The finality of the judgment against Blue Diamond is no more a discouragement to litigation than the prospect of defeat in any lawsuit. There are always consequences from choosing to litigate, and other consequences follow from each choice made in the course of litigation. Enforcing the finality of judgments in no way threatens the development of the law. Plaintiffs who believe that their constitutional rights are being violated will make calculated decisions, as they always have, as to if, when, and where to file suit, and what strategies to follow during litigation. Those who go first and fail ultimately will receive, on a prospective basis, the benefit of any more favorable results that may be achieved by others, just as Blue Diamond has. That others have succeeded where Blue

Diamond failed, however, is not grounds for granting retroactive relief.[7/]

Blue Diamond's effort to obtain relief under Rule 60(b)(6) is flawed for still another reason – Blue Diamond failed fully to pursue its appellate remedies. When Blue Diamond sought review in this Court in September 1996, it deliberately abandoned its due process claim and argued only that the Coal Act, as applied to Blue Diamond, violated the Takings Clause. This was no small omission. As the decision in Eastern shows, Eastern's due process argument was essential to secure the fifth vote in favor of Eastern's position. Five Justices (the four dissenters and Justice Kennedy) concluded that the Takings Clause does not provide the proper basis for determining the validity of economic regulatory legislation like the Coal Act. Blue Diamond thus made a significant litigation choice when it elected not to pursue its due process claim in this Court. That choice makes this case a particularly poor candidate for relief under Rule 60(b)(6).

Parties may not use Rule 60(b)(6) as a substitute for full pursuit of appellate remedies. Ackermann, 340 U.S. at 198. See also Local 322, Allied Indus. Workers of America v. Johnson Controls, Inc., 969 F.2d 290 (7th Cir. 1992) (party that did not petition for certiorari was not entitled to relief from final judgment under Rule 60(b) after this Court granted petitions

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7/Blue Diamond contends that review is needed to ensure that litigants are not "categorically denied" Rule 60(b)(6) relief. Pet. 10. But this spectre is belied by the express language of the court of appeals' opinion, which acknowledged the need for "a case-by-case inquiry" and stressed that its decision was "merely a determination that, in this case, the district court abused its discretion in granting such relief." Pet. App. 18a (emphasis added).

filed by other parties and reversed court of appeals' decision); Hopper, 867 F.2d at 291 (party that chose not to petition cannot use Rule 60(b) to ride on the coattails of another party who did petition).

It is no answer to say, as Blue Diamond now does (Pet. 6 n.9), that "the omission of a strictly legal issue from a petition for certiorari does not waive it . . . ." This Court's Rule 14.1(a) provides that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." This Court routinely refuses to consider questions not presented in the petition, and will consider such issues "'only in the most exceptional circumstances,' where reasons of urgency or of economy suggest the need to address the unpresented question in the case under consideration." Yee v. City of Escondido, California, 503 U.S. 519, 535 (1992) (citation omitted). Blue Diamond's petition presented no such circumstances (as the later petition in Eastern confirmed), and Blue Diamond does not even try to contend that its due process claim was "fairly included" within its Takings Clause argument. Relief under Rule 60(b)(6) is not designed to enable a party in these circumstances to avoid the consequences of its litigation choices.

C. Blue Diamond's Notions of "Equal Justice" Do Not Support Its Request for Rule 60(b)(6) Relief.

Blue Diamond's repeated references to "equal justice" are misguided. At all relevant times, Blue Diamond has been treated just like all other similarly situated operators. Blue Diamond's demands for "equal justice" are in reality nothing more than a claim that the final judgment against Blue Diamond must be disregarded in determining which operators are similarly situated. That is not correct.

Prior to Eastern, Blue Diamond was treated just like every other coal operator that challenged the Coal Act. Indeed, Blue Diamond makes no claim that it was in any way subjected to disparate treatment while litigating its constitutional challenges.

Since Eastern, Blue Diamond also has received equal treatment. The assignments of Combined Fund beneficiaries to Blue Diamond were declared void, and Blue Diamond has not made, or been asked to make, any premium payments to the Combined Fund since June 1998. Prospectively, in other words, Blue Diamond has benefitted from Eastern in the same way as other operators that did not sign, and are not related to persons that signed, a coal wage agreement in 1974 or thereafter. Retrospectively, the Combined Fund has treated Blue Diamond in the same way as every other assigned operator against which a final judgment has been entered. Contrary to the impression that Blue Diamond seeks to create, the Combined Fund has in no way singled out Blue Diamond for special treatment. As the record shows, the Combined Fund has not refunded past premiums to any of the 13 companies whose beneficiary assignments were declared void after Eastern but that previously were subject to final judgments entered after litigation or settlement. The total sums initially paid by those

companies were approximately $21.5 million. JA 403.[8] By contrast, the Combined Fund paid refunds to approximately 50 other companies whose beneficiary assignments were declared void and that were not subject to final judgments. The total amount of these refunds was approximately $18.6 million. JA 399.[9]

In four cases other than this one, "final judgment" operators that did not receive refunds from the Combined Fund sought relief under Rule 60(b)(6), and in each case relief was denied. In Templeton Coal Co. v. Apfel, No. TH93-158-C-T/H (S.D. Ind. 1999), for example, the district court explained that "when the law is changed, many (if not most) times that change can be chalked up to notions of fairness or justice. If this were a reason for reopening all final judgments made under the prior law, then there would not be much left of the general rule that a subsequent change in the law will not alone justify Rule 60(b)(6) relief." App. 13a (copy attached). Likewise, in Holland v. Virginia Lee, the district court declined to reopen an earlier final order dismissing the case with prejudice:

> [C]hanges in the law inevitably lead to one or more parties from an earlier litigation feeling

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8/"JA" refers to the joint appendix in the court of appeals.

9/In an effort to bolster its claims of inequity, Blue Diamond refers to some 124 companies whose Combined Fund beneficiary assignments were declared void after Eastern. As used by Blue Diamond, the number is misleading. Approximately half of these companies never made any premium payments to the Combined Fund and never litigated the validity of the Coal Act against the Combined Fund or the government. When their beneficiary assignments were declared void, no refund issue arose.

> that they have been treated unfairly. As one district court recently noted, "[e]volving legal standards are part and parcel of the legal system in this country. As conditions change, so must some laws. That defendant suffered a judgment and paid damages pursuant to legal doctrine that has subsequently been overruled is an inevitable consequence."

188 F.R.D. at 255-56 (citations omitted). See also Coltec Indus., Inc. v. Hobgood, 184 F.R.D. 60 (W.D. Pa. 1999), appeals pending, Nos. 00-2458 and 00-4385 (3d Cir. argued Sept. 19, 2001); Lindsey Coal Mining Co. Liquidating Trust v. Apfel, No. 94-143 (W.D. Pa. 1999) (copy attached).

In the wake of the decisions in Templeton, Virginia Lee, Coltec, and Lindsey, the "final judgment" operators took their concerns to the Legislative Branch, and Congress provided some relief, although not as much as Blue Diamond would have liked. In particular, in the Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, Title VII, § 701(a)(2), 2000 U.S.C.C.A.N. (114 Stat.) 922, 1024-25, Congress provided for the transfer to the Combined Fund of an additional $2.2 million in interest earned by the AML Fund. This $2.2 million was earmarked to be used to provide refunds, on a proportional basis, to companies situated like Blue Diamond. After considering the issue at some length, Congress thus chose to provide a little more than 10% of the relief that Blue Diamond and other similarly situated companies have sought as refunds from the Combined Fund. This money has now been distributed to Blue Diamond and the other "final judgment" companies.

In enacting this measure, Congress considered and rejected more extensive relief than the measure Congress eventually enacted. See, e.g., S. 2729, 106th Cong., 2d Sess.

§ 213 (2000); H.R. 4713, 106th Cong., 2d Sess. § 213 (2000). One such measure, entitled the "Retired Coal Miners Health Benefit Security Act," was approved by the Senate Finance Committee. It provided for a general appropriation to the Combined Fund in the amount of $77,438,000, $20,438,000 of which was explicitly earmarked for refunds to companies like Blue Diamond.[10/] Although some legislators advocated the full measure of relief sought by Blue Diamond, Congress ultimately chose a more limited remedy that has provided Blue Diamond with a refund of approximately $1.4 million.

The congressional resolution of this issue warrants deference from the courts. Congress already has considered the arguments made by Blue Diamond and others, and it has provided what it determined was the appropriate relief. This recent legislative action thus provides further support for the proposition that Blue Diamond is not entitled to the extraordinary remedy of reopening a fully litigated final judgment under Rule 60(b)(6).

In the court of appeals, Blue Diamond attempted to respond to the authority cited by the government and the Trustees by relying on so-called "same accident" cases, such as Gondeck v. Pan American World Airways, 382 U.S. 25 (1965), and Pierce v. Cook & Co., 518 F.2d 720 (10th Cir. 1975), or "same contract" cases, such as First American Nat'l Bank v. Bonded Elevator, Inc., 111 F.R.D. 74 (W.D. Ky. 1986), and

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10/A copy of this unnumbered bill and an excerpt from the September 7, 2000 Congressional Record reflecting the favorable action by the Senate Finance Committee were submitted by the Combined Fund to the court of appeals in October 2000 as part of a Notice of Recent Legislation. A copy of this Notice, with its attachments, has been lodged with the Clerk of this Court.

Norman v. Nichiro Gyogyo Kaicha, Ltd., 761 P.2d 713 (Alas. 1988). The court of appeals correctly held that, whatever the justification for these rulings in the specific factual and legal contexts in which they were entered, they have no application here, where the common element is not an accident or private contract, but a federal statute providing for health care for more than 100,000 beneficiaries in an entire industry. Pet. App. 9a-13a.

In its petition, Blue Diamond has modified its earlier argument to some extent. Rather than trying to shoehorn the Coal Act directly into the mold of the "same accident" or "same contract" cases, Blue Diamond maintains that, under the cited decisions, "there are only two possible circumstances that serve to justify the continued recognition of erroneous lower court judgments, upholding a statute declared unconstitutional by this Court." Pet. 8. According to Blue Diamond, these two circumstances are reliance by the victorious party on its favorable judgment and a waiver of rights by the losing party. Id. at 8-9.

Apart from the fact that Blue Diamond does not explain how it has distilled its proposed rule from the cited cases, and apart from the fact that acceptance of Blue Diamond's approach would render Rule 60(b)(6) relief the rule rather than the exception, Blue Diamond would not prevail even on its own view of the law. First, as discussed previously, Blue Diamond waived its right to Rule 60(b)(6) relief by failing fully to pursue its appellate remedies. Second, the Combined Fund substantially relied on the final judgment it received against Blue Diamond. As the court of appeals correctly concluded (Pet. App. 17a):

> [T]he reliance interest of the Combined Fund on the previous final judgment is substantial. Four years had elapsed between the district court's

> declaratory judgment and its subsequent grant of post-judgment relief. During that time, payments made to the Combined Fund pursuant to the previous decision were used to cover the medical health benefits of numerous retirees.

Blue Diamond contends, however, that the Combined Fund could not reasonably have relied on the judgment, because the judgment did not impose on Blue Diamond an affirmative obligation to pay Combined Fund premiums, and because the Combined Fund used all of its premium income, not just that received from Blue Diamond, to pay for retiree health care. Pet. 12. Both points are non sequiturs.

Having unsuccessfully attacked the validity of the statute, Blue Diamond had no basis for refusing to comply with the law. That point was just as obvious to the Combined Fund as it was to Blue Diamond itself. Moreover, the fact that the Combined Fund used not only Blue Diamond's premiums but all of the premium income that it received from all of the assigned operators only reinforces the point that the Combined Fund relied on the judgment. The Combined Fund has needed all of the revenue authorized by the statute to fulfill its statutory obligation to provide health benefits to the Fund's beneficiaries. Indeed, after Eastern the Combined Fund was obliged to impose supplemental assessments on the remaining participating employers in the Fund to replace amounts no longer available to the Combined Fund because of this Court's decision. In addition, due to the continuing escalation of health care costs, Congress twice recently appropriated additional sums to address the Combined Fund's financial difficulties.[11/]

11/In both instances, these special appropriations involved additional transfers from the AML Fund, over and above the transfers specified in the Coal Act itself. First, on November

The court of appeals thus correctly determined that the Combined Fund and its Trustees relied heavily on the money received from Blue Diamond and had every reason to trust in the finality of the judgment against Blue Diamond.[12/]

29, 1999, Congress provided for the special transfer of $68,000,000 in interest credited to the AML Fund "to pay the amount of any shortfall in any premium account for any plan year under the Combined Fund." Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, Title V, 1999 U.S.C.C.A.N. (113 Stat.) 1501, 1501A-214. Less than a year later, on October 11, 2000, Congress provided for another transfer of funds, this time "in such amounts as estimated by the trustees of such [Combined] Fund to offset the amount of any deficit in net assets in the Combined Fund through August 31, 2001." Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, § 701(a), 2000 U.S.C.C.A.N. (114 Stat.) 922, 1024-25.

12/In a further effort to deny the Combined Fund's legitimate reliance on the district court judgment, Blue Diamond observes that the Coal Act contains a provision under which the Combined Fund must credit or repay premiums to an operator that has received an assignment of a Combined Fund beneficiary in error. Pet. 12. The court of appeals swiftly and correctly disposed of this argument: "Clearly, [Section 9706(f)(3)(A)(i) of the Coal Act] deals with a review of the particular facts concerning a particular retiree, and does not contemplate the general applicability or constitutionality" of any portion of the statute. Pet. App. 14a-15a. The statute itself confirms this point. It provides for administrative review of the correctness of individual assignments. Claims that part or all of the Coal Act is unconstitutional could not be sustained by the Secretary or the Commissioner in any event.

Blue Diamond also claims that the Combined Fund could not have relied on its final judgment because other lawsuits remained alive and the Combined Fund had no real "closure" on this issue. Pet. 9. In other words, Blue Diamond takes the remarkable position that, as long as the government, the Combined Fund, or any other specific defendant or group of defendants is litigating in any court with any plaintiff as to the validity or interpretation of a statute or regulation, none of the final judgments entered can be anything other than tentative, unless and until this Court grants review in at least one such case and issues a decision. This position cannot be reconciled with the well-established principles regarding the finality of judgments discussed above.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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October 1, 2001

APPENDIX

IN THE UNTIED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LINDSEY COAL MINING COMPANY LIQUIDATING TRUST by its Liquidating Trustees H. Robert Lasday and Elaine K. Light Plaintiffs,	)	
-vs-	)	Civil Action No. 94-143
KENNETH S. APFEL, Commissioner of Social Security, et al., Defendants.	)	
AMBROSE, District Judge.	)	

MEMORANDUM OPINION
and
ORDER OF COURT

This declaratory judgment action was brought by Plaintiff in 1994, seeking judicial review of a final action of the Commissioner of Social Security, made in 1993, assigning Plaintiff liability for twenty-three (23) of its former miners (or their dependents or beneficiaries) pursuant to the Coal Act, 26 U.S.C.A. § 9701-9722. Under the assignment Plaintiff was required to make payments to a multi-employer benefit fund established as a result of negotiations and agreements entered into between members of the Central Pennsylvania Coal Producers Association and the union representing Plaintiff's miners.

Plaintiff disputed these obligations under the Coal Act in this lawsuit, arguing that it was not subject to the provisions of the Coal Act and that even if it was subject to the Act, the Act was unconstitutional.

I rejected Plaintiff's arguments and granted summary judgment in favor of Defendants. The Court of Appeals affirmed. Plaintiff did not file an appeal of that decision.

Thereafter, the Supreme Court of the United States in Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S.Ct. 2131 (1998) held that the Coal Act, as applied to a party similarly situated as Plaintiff, was unconstitutional.

One year after the Supreme Court's decision, Plaintiff has filed a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) (Docket No. 52). Federal Rule of Civil Procedure 60(b)(6) provides: "On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons...(6) any other reason justifying relief from the operation of the judgment." Plaintiff also requests an indefinite stay of any action on its Motion for Relief pending development of similar motions by other similarly situated Plaintiffs requesting relief from judgment in other "Coal Act" cases. Specifically, Plaintiff avers that a United States District Court has granted a motion to vacate its original judgment in a similar case under Rule 60(b)(6) in Blue Diamond Coal Co. v. Shalala, No.3:93-cv-473 (E.D.Tenn., November 4, 1998), and an interlocutory appeal of that order is pending. Additionally, Plaintiff alleges that motions to vacate judgments have been filed in similar circumstances in Templeton Coal Co. and Davon, Inc., No. TR 93-198-c-T/H (S.D. Ind.).

This is not the first time this issue has come before this

Court. In Coltec Industries, Inc. v. Hobgood ("Coltec"), 184 F.R.D. 60, 61 (W.D. Pa. Jan. 29, 1999), Judge Smith denied a motion to vacate under Rule 60(b)(6) in another Coal Act case. The facts in Coltec were different from those present here in that the Plaintiff in Coltec voluntarily dismissed its constitutional claims in exchange for Defendant's agreement to allow Plaintiff to amend its complaint to state a claim challenging how their Coal Act contributions were calculated. Thus, Plaintiff made a deal to give up constitutional claims for the right to pursue miscalculation claims.

In discussing the Coltec Plaintiff's Motion brought under Rule 60(b)(6),[1] Judge Smith refused to grant the Motion. Noting that relief under Rule 60(b)(6) is extraordinary and may be granted only on a showing of exceptional circumstances (In re Fine Paper Antitrust Litig., 840 F.2d 188, 194 (3d Cir. 1998)), Judge Smith held that "(a) change in the decisional law after judgment is entered, however, is not considered exceptional and does not justify relief" (citations omitted).

That the facts and procedural history herein differ from those in Coltec is of no import to the outcome. In the interest of consistency and because I find the reasoning of Judge Smith to be persuasive, I find that Plaintiff's Motion for Relief from Judgment and Request for a Stay should be denied as Plaintiff has not presented the extraordinary and exceptional type of facts justifying relief under Federal Rule of Civil Procedure 60(b)(6).

DATE FILED: August 4, 1999

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[1]The Plaintiff in Coltec also requested relief under Rule 60(b)(5). That request was also denied.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

TEMPLETON COAL COMPANY, INC., SHERWOOD-TEMPLETON COAL COMPANY, INC., and PRINCETON MINING COMPANY, Plaintiffs,	)
vs.	)TH 93-158-C-T/H
KENNETH S. APFEL, Commissioner, Social Security Administration, and UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND, Defendants.	)

ENTRY DENYING PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT

This matter comes before the court on the Motion for Relief from Judgment filed by Plaintiffs, Templeton Coal Company, Inc., Sherwood-Templeton Coal Company, Inc., and Princeton Mining Company, pursuant to Federal Rule of Civil Procedure 60(b)(6).[1] Plaintiffs filed this suit on

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[1]A Rule 60(b)(6) motion has been filed in another case in this court, Davon Inc. v. Apfel, No. TH 93-198-C-T/H. The Rule 60(b)(6) motions in these two cases were filed

September 2, 1993,[2] seeking a declaratory judgment that the "super-reach back" provisions of the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, were unconstitutional as applied to them. The Coal Act created Defendant United Mine Workers of America Combined Benefit Fund ("Combined Fund") and provided that Defendant Kenneth S. Apfel, Commissioner of the Social Security Administration ("SSA"), would assign a portion of the Combined Fund beneficiaries to a group of former coal mining companies that last had collective bargaining relationships with the United Mine Workers prior to 1974. Plaintiffs are such companies, known as "super-reach back companies," and were assigned Combined Fund beneficiaries.

On April 4, 1995, this court granted Defendants' motions for summary judgment, deciding that the challenged provisions of the Coal Act, as applied to Plaintiffs, did not violate the takings or due process clauses of the Fifth Amendment. *See Templeton Coal Co., Inc. v. Shalala,* 882 F. Supp. 799 (S.D. Ind. 1995). The Seventh Circuit affirmed, and the Supreme Court denied Plaintiffs' petitions for certiorari. *See Davon, Inc. v. Shalala,* 75 F.3d 1114 (7th Cir.), *cent. denied,* 519 U.S. 808 (1996). In 1998, the Supreme Court decided *Eastern Enterprises v. Apfel,* 524 U.S. 498 (1998), holding that the "super-reach back"

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jointly and the discussion in this Entry is equally applicable to the motion filed in Davon. Inc. However, the formal ruling on Davon's motion will be issued in a separate Entry under the Davon. Inc. caption.

[2]Davon filed its suit November 3, 1993.

provisions of the Coal Act were unconstitutional as applied to the plaintiff in that case. Four justices found the provisions to be an unconstitutional taking, one justice found them to violate the due process clause, and four justices dissented.[3]

Between November 1993 and July 1998, Plaintiffs paid premiums to the Combined Fund in the following amounts: Templeton Coal Co.--$594,518; Sherwood--Templeton Coal Co.--$34,453; Princeton Mining Co.--$1,165,333.[4] After the *Eastern Enterprises* decision, the SSA sent letters to the Plaintiffs, and other "super-reach back companies," stating that "[p]ursuant to the ... *Eastern Enterprises* [decision], the assignments to [the "super-reach back companies"] under the provisions of the [Coal Act] are void." (Patton Aff., Ex. D; Wulf Aff., Ex. C; Smith Aff., Ex. C; Mot. of Pls.' for Relief from J., Ex. 4 at 5.) This action effectively relieved all "super-reach back companies," including the Plaintiffs, of any future obligations to make payments under the Coal Act.

The Combined Fund then began refunding premiums previously paid by some of the "super-reach back companies"; the refunds were retroactive and in full, covering all premiums paid. However, the "super-reach back companies" who had

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[3]Background facts surrounding the Coal Act and the challenges to its constitutionality by "super-reach back companies" are fully set forth in the opinions by the Supreme Court in *Eastern Enterprises*, the Seventh Circuit in *Davon, Inc.*, and this court in *Templeton Coal Co.*

[4]Davon, Inc. paid $1,048,174.

binding judgments entered against them (such as the Plaintiffs), have not received any refunds.[5]

Armed with the decision in *Eastern Enterprises*, the Plaintiffs return to this court seeking relief, pursuant to Rule 60(b)(6), from the April 4, 1995 judgment. Presumably Plaintiffs' goal is to re-open this case in order to demand a refund of the premiums they paid to the Combined Fund before the *Eastern Enterprises* decision.

Rule 60(b) of the *Federal Rules of Civil Procedure* authorizes relief from a court's judgment or order based upon a variety of grounds, including mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud or misconduct by the opposing party, lack of jurisdiction of the issuing court, or prior satisfaction or release of the judgment. Rule 60(b)(6) adds a residual category authorizing relief for "any other reason justifying relief from the operation of the judgment."

"Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances." *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 131 F.3d 625, 628 (7th Cir. 1997) (citing *Dickerson v. Board of Educ. of Ford Heights, Ill.*, 32 F.3d. 1114, 1116 (7th Cir. 1994)). An "overarching concern" of Rule 60(b) is "the need for the finality of judgments." *Id.* "Rule 60(b) sets a 'higher value on

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[5]Except as noted, the Defendants have not disputed these factual assertions; accordingly, the court accepts them as true in deciding Plaintiffs' Motion. *See Klapprott v. United States*, 335 U.S. 601, 603-04 (1949) (accepting as true undenied factual allegations in a Rule 60(b)(6) motion).

the social interest in the finality of litigation.'" *Id.* (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983)).

Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." *Klapprott v. United States*, 335 U.S. 601, 615 (1949) (allowing a naturalized citizen to set aside a default judgment of denaturalization, upon a showing that he had been sick, indigent, and imprisoned at the time the judgment had been entered). "In a rule already limited in application to extraordinary circumstances, proper resort to this 'catch all' provision is even more highly circumscribed." *Provident Sav. Bank v. Popovich*, 71 F.3d 696, 700 (7th Cir. 1995) (citing *Pantoja v. Texas Gas & Transmission Corp.*, 890 F.2d 955, 960 (7th Cir. 1989) (Rule 60(b)(6) is to be applied only in "the most extraordinary of circumstances.")).

"[A] change in the applicable law after entry of judgment does not, by itself, justify relief under 60(b)." *McKnight v. United States Steel Corp.*, 726 F.2d 333, 336 (7th Cir. 1984) (citing *DeFilippis v. United States*, 567 F.2d 341, 343 n.5 (7th Cir. 1977) ("[C]ourts are generally agreed that a change in the law after entry of judgment does not alone justify relief under (b)(6).")); *see also Agostini v. Felton*, 521 U.S. 203, 239 (1997) ("Intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)."); RESTATEMENT (SECOND) OF JUDGMENTS § 73 cmt. c (1982) (It is a very unsound policy" to apply Rule 60(b) "where a subsequent judicial decision changes the law that was applied in reaching an earlier judgment."). This rule applies even if the changed precedent is from the Supreme

Baldinger, 38 F.3d 1266, 1273 (2d Cir. 1994) ("This principle [that a change in decisional law does not itself warrant Rule 60(b)(6) relief] ... applies in federal cases where the Supreme Court has changed the applicable rule of law.") (citing *Picco* v. *Global Marine Drilling Co.*, 900 F.2d 846, 851 (5th Cir. 1990) (holding that the district court abused its discretion in granting Rule 60(b)(6) relief based upon a Supreme Court decision that changed the law)); *Bailey v. Ryan Stevedoring Co., Inc.*, 894 F.2d 157, 160 (5th Cir. 1990) (citing *McKnight* and *Title v. United States*, 263 F.2d 28, 31 (9th Cir. 1959)); *Travelers Indem. Co. v. Sarkisian*, 794 F.2d 754, 757 (2d Cir.), *cert. denied*, 479 U.S. 885 (1986).

Further, this rule applies when the underlying judgment involves a constitutional claim.[6] *See Batts v.*

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[6]Plaintiffs assert that "[t]he policy favoring the finality of judgments is not strong when developing federal constitutional rights are involved." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 13.) However, the cases cited by Plaintiffs are inapposite because they all involve *prospective* application of past judgments. *See Whitcomb v. Davis*, 403 U.S. 124 (1971); *Parnell v. Rapides Parish Sch. Bd.*, 563 F.2d 180, 185 (5th Cir. 1977); 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE §131.24[4] (3d ed. 1998) ("Some cases involving continued or threatened violation of constitutional rights have recognized an exception to the general rule that a change in the law will not avoid claim preclusion."). In this case, it is undisputed that this court's judgment will have no prospective effect; in other words, regardless of the result of this Rule (60)(b)(6) motion, Plaintiffs will have no future obligation to make payments

Tow-Motor Forklift Co., 66 F.3d 743, 749 (5th Cir. 1995) ("Changes in decisional law based on constitutional principles are not of themselves extraordinary circumstances sufficient to justify Rule 60(b)(6) relief.") (citing *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958)). In *Collins*, a plaintiff challenged the constitutionality of a Kansas statute relating to the notice landowners received in condemnation actions. The plaintiff lost at trial and on appeal and the U.S. Supreme Court denied his petition for certiorari. Over a year later, in a different case, the Supreme Court held that the notice provisions of the same Kansas statute were unconstitutional. The plaintiff in the first action sought relief from the adverse judgment in light of the new Supreme Court case. The Tenth Circuit affirmed the district court's denial of the motion, explaining that "[l]itigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside." *Collins*, 254 F.2d at 839.

Notwithstanding this caselaw, Plaintiffs move for relief from judgment in light of *Eastern Enterprises*. In support of their Rule 60(b)(6) motion, Plaintiffs present three main arguments: (1) the basis of the *Eastern Enterprises* decision, notions of fairness and justice, fulfills the standard for granting Rule 60(b)(6) relief; (2) after the *Eastern Enterprises* decision, the SSA "voided" the assignment of beneficiaries to Plaintiffs, meaning that the assignments should be treated as having never occurred; and, (3) the equities weigh heavily in favor of granting Rule 60(b)(6) relief.

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under the Coal Act.

1. Basis of the *Eastern Enterprises* Decision

Plaintiffs first argue that the *Eastern Enterprises* decision should not be treated as "merely a subsequent judicial decision changing the law," because the decision was based upon "fundamental notions of justice" and "substantial questions of fairness." (Reply Br. of Pls. in Supp. of Mot. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) ("Reply Br. of Pls.") at 6 (quotations omitted).)

However, Plaintiffs fail to cite to any case holding, or even intimating, that a subsequent change in the law will alone warrant Rule 60(b)(6) relief if the subsequent change was made on the grounds of "notions of justice" and/or "questions of fairness."[7] This court is hesitant to adopt such an exception to the general rule (that a subsequent change in the law will not alone warrant Rule 60(b)(6) relief) because such an exception would threaten to eviscerate the rule.

In many (if not most) cases, a losing litigant could fashion an argument that the subsequent change in the law is based upon general notions of fairness. For example, in *Tomlin v. McDaniel,* 865 F.2d 209 (9th Cir. 1989), the plaintiffs 42 U.S.C. § 1983 action was dismissed by the district court as time barred because the court held that a

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[7]These quotations come from the plurality's opinion in *Eastern Enterprises. See* 118 S.Ct. at 2151, 2152. Justice Kennedy's concurrence (which was necessary to form a majority) is not so strongly worded. However, the court assumes for the sake of argument that the Supreme Court's holding in *Eastern Enterprises* is based upon "notions of justice" and "questions of fairness."

one-year statute of limitations applied to such actions. The plaintiff lost on appeal and the Supreme Court denied his petition for certiorari. Subsequently, the Supreme Court held that the relevant state's statute of limitations applicable to personal injury actions was also applicable to section 1983 actions. *See Wilson v. Garcia, 471 U.S.* 261, 276 (1985). Because the plaintiffs section 1983 action had been filed within twenty-one months of its accrual, and the relevant state's statute of limitations for personal injury actions was two years, under *Wilson,* the plaintiffs suit would not have been dismissed as being untimely. The Ninth Circuit affirmed the district court's denial of Rule 60(b)(6) relief. *See Tomlin,* 865 F.2d at 211. As is the case with the *Eastern Enterprises* decision, the Supreme Court's *Wilson* decision could readily be said to be based upon general notions of justice. For instance, the Court said the following:

> The rights enforceable under § 1983 include those guaranteed by the Federal Government in the Fourteenth Amendment: that every person within the United States is entitled to equal protection of the laws and to those "fundamental principles of liberty and justice" that are contained in the Bill of Rights and "lie at the base of all our civil and political institutions." These guarantees of liberty are among the rights possessed by every individual in a civilized society, and not privileges extended to the people by the legislature.
>
> * * *
>
> The characterization of all § 1983 actions as involving claims for personal injuries minimizes the risk that the

> choice of a state statute of limitations would not fairly serve the federal interests vindicated by § 1983.

Wilson, 471 U.S. at 278-79 (citations omitted).

And in *Collins v. City of Wichita*, 254 F.2d 837 (10th Cir. 1958), see recitation of *Collins'* facts above, the basis of the subsequent Supreme Court decision, which invalidated the same statute unsuccessfully challenged by the plaintiff in *Collins*, was the due process clause. *See Walker v. Hutchinson City*, 352 U.S. 112 (1956) (holding that the notice provisions of the statute at issue did not measure up to the requirements of the due process clause of the Fourteenth Amendment). A "fairness" argument could easily be fashioned from a case finding a statute violative of the due process clause. However, in *Collins*, as in *Tomlin*, the court of appeals affirmed the district court's denial of Rule 60(b)(6) relief.

It should be noted that neither *Collins* nor *Tomlin* discuss the issue of whether the basis of the subsequent change in the law can (or should) provide a sufficient basis for granting Rule 60(b)(6) relief. But the point is that when the law is changed, many (if not most) times that change can be chalked up to notions of fairness or justice. If this were a reason for reopening all final judgments made under the prior law, then there would not be much left of the general rule that a subsequent change in the law will not alone justify Rule 60(b)(6) relief.

2. "Voided" Assignments

Plaintiffs next argue that Rule 60(b)(6) relief is warranted because after the *Eastern Enterprises* decision, the SSA "voided" the assignment of beneficiaries to Plaintiffs. As indicated above, after the *Eastern Enterprises* decision, the SSA sent letters to the Plaintiffs, and other "super-reach back companies," stating that "[p]ursuant to the ... *Eastern Enterprises* [decision], the assignments to [the "super-reach back companies"] under the provisions of the [Coal Act] are void." (Patton Aff., Ex. D; Wulf Aff., Ex. C; Smith Aff., Ex. C; Mot. of Pls.' for Relief from J., Ex. 4 at 5.) It is clear that this action effectively relieved all "super-reach back companies," including the Plaintiffs, of any *future* obligations to make payments under the Coal Act. However, Plaintiffs also contend that by using the word "void" in the letter, the SSA *retroactively* undid the assignments, and therefore the assignments should be viewed as having never occurred. "And if an act did not legally occur, it is metaphysically--and equitably-impossible for the consequences of such an act to remain in force." (Reply Br. of Pls. at 7.) Therefore, Plaintiffs argue, this is an exceptional circumstance warranting Rule 60(b)(6) relief.

Since the SSA opposes Plaintiffs' Motion for Relief from Judgment, it seems reasonable to conclude that when the SSA used the word "void," the SSA did not *intend* for it to provide an avenue for opening the judgment. (Def. Apfel's Mem. of Law in Opp'n to Pls.' Mot. for Relief from J. at 6 (indicating that in 'voiding' the assignments, the SSA took "action that effectively relieved] plaintiffs of further obligations to make payments under the [Coal Act]").) Further, Plaintiffs provide no case holding, or even intimating, that a statement made by an opposing party--after judgment

becomes final and after the subsequent change in the law--can constitute an exceptional circumstance warranting Rule 60(b)(6) relief. Even if the SSA intended to retroactively cancel the assignments, and even if the SSA supported this Rule 60(b)(6) motion and strongly believed that the Combined Fund should refund all the money the Plaintiffs paid, it is difficult to see how this really matters. Under the Coal Act's statutory scheme, the SSA assigns the beneficiaries and the Combined Fund collects and distributes the money--no party has argued that the SSA has any authority to refund premiums. Moreover, it would be an unconstitutional violation of the separation of powers doctrine if the SSA attempted to require a court to open a final judgment. See *Holland v. Virginia* Lee Co., 188 F.R.D. 241, 256 (W.D. Va. 1999) (rejecting a similar argument); *cf. Plaut v. Spendthrift Farm,* 514 U.S. 211 (1995) (holding that a federal statute which required courts to open certain judgments violated constitutional separation of powers principles).

3. Equities

Finally, Plaintiffs argue that the equities weigh heavily in favor of granting their Rule 60(b)(6) motion.

First, Plaintiffs contend that the Combined Fund's only claim of right to the premiums paid by Plaintiffs is this court's judgment, which, in light of *Eastern Enterprises,* is not correct. Therefore, Plaintiffs argue, "denying this motion would ... affirm an unconstitutional act [and] allow the Fund to retain over $2.8 million of Plaintiffs' money to which the Fund has no legitimate claim." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 11-12.) The problem with this argument is that it (or some

variation of it) could be made any time there is a subsequent change in the law.

Next, Plaintiffs argue that they "are being punished for trying to vindicate constitutional rights that were ultimately validated by the Supreme Court in *Eastern Enterprises*." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 10.) Indeed, Plaintiffs reason that had they and other companies not first challenged the constitutionality of the "super reachback" provisions of the Coal Act, the Supreme Court would not have granted certiorari in *Eastern Enterprises*, and therefore, "[w]ithout litigation such as plaintiffs', there would not be today a Supreme Court ruling to clarify this constitutional issue." (*Id.* at 11 n. 6.)

Plaintiffs may be correct that their litigation was in part responsible for the Supreme Court's granting of certiorari in *Eastern Enterprises*, although given the discretionary nature of the Supreme Court's certiorari powers in such cases, this would be a highly speculative basis for granting Rule 60(b)(6) relief. Further such an argument must be tempered by the need for finality in litigation. In *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991), Justice Souter, announcing the judgment of the Court, addressed the issue of "litigants ... freeload[ing] on those without whose labor the new rule would never have come into being." *Id.* at 541 (Souter, J., announcing the judgment of the Court, joined by Stevens, J.). Justice Souter answered the question, "[W]hy should someone whose failure has otherwise become final not enjoy the next day's new rule, from which victory would otherwise spring?" with the following discussion:

> Insofar as equality drives us, it might be argued that the new rule should be applied to those who had toiled and failed, but whose claims are now precluded by res judicata; and that it should not be applied to those who only exploit others' efforts by litigating in the new rule's wake. . . . .
>
> While those whose claims have been adjudicated may seek equality, a second chance for them could only be purchased at the expense of another principle. Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of that contest, and that matters once tried shall be considered forever settled as between the parties. Finality must thus delimit equality in a temporal sense, and we must accept as a fact that the argument for uniformity loses force over time.

Id. at 542 (quotation and citations omitted).

Next, Plaintiffs argue that they "are being penalized for obeying the law while others are rewarded for disobeying it." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 11.) They reach this conclusion because "super-reachback companies" who did not pay the premiums and did not bother to sue will now never be required to pay. In contrast, Plaintiffs paid the premiums and dutifully pursued their rights through the legal system.

Defendants respond to this argument by citing *Cincinnati Insurance Co. v. Flanders Electric Motor Service, Inc.*, 131 F.3d 625 (7th Cir. 1997). In that case, Cincinnati Insurance, an insurer, brought a declaratory judgment action

in federal court against Flanders, its insured, seeking a declaration that the pollution exclusion in the insurance policy at issue precluded coverage for the cleanup of a contaminated site. The district court decided in favor of Cincinnati Insurance on the as-yet-undecided Indiana state law issue, and the Seventh Circuit affirmed. A year and a half later, the Indiana Supreme Court considered the same issue in two different cases, and decided that the pollution exclusion clause did not preclude coverage. The district court denied Flanders' motion for relief from judgment pursuant to Rule 60(b)(6) and Flanders appealed. The Seventh Circuit considered Flanders' argument that, in light of the new Indiana Supreme Court cases, other insured parties were receiving insurance coverage for pollution *at the same site,* while Flanders was not. Therefore, Flanders argued, "it [wa]s being inequitably treated vis-a-vis some other 'potentially responsible parties.'" *Id.* at 629. The Seventh Circuit affirmed the denial of Rule 60(b)(6) relief, noting that "[a]ny change in the law may leave one or more parties of earlier litigation with the feeling that they have been treated unfairly, but this must be balanced with the need for finality of litigation." *Id.* at 630.

The "fairness" argument advanced by Flanders appears to have been virtually the same as that now advanced by Plaintiffs--just as the only thing that distinguished Flanders from the other "potentially responsible parties" was the fact that a final judgment had been issued against him before the controlling Indiana Supreme Court decision, so the only thing that distinguishes Plaintiffs from the other "super-reach back companies" is the fact that a final judgment had been issued against them before the *Eastern Enterprises* decision.

The court notes, however, the holding of *Cincinnati Insurance* was that the district court did not abuse its

discretion in denying Flanders' Rule 60(b)(6) motion; the Seventh Circuit espoused no opinion on the issue of whether it was within the range of the district court's discretion to *grant* the motion. But it is clear from *Cincinnati Insurance* that "the need for finality" is worth substantial weight when balanced against such a fairness argument.

Plaintiffs seem to dispute that there is a need for finality in this case; they argue that "[t]here are no compelling issues of finality here." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 12.) They argue that "only a few other companies are situated in Plaintiffs' exceptional circumstances, so the Court need not fear the opening of litigation floodgates by granting relief here."[8] (Reply Br. of Pls. at 8-9.)

When *Cincinnati Insurance* and other Rule 60(b)(6) cases speak of balancing the movant's arguments with the need for finality, these cases speak of "finality" in a larger sense than Plaintiffs do. For instance, there is no indication that in *Cincinnati Insurance*, either the district court or the Seventh Circuit was concerned about a rush of Rule 60(b)(6) motions from other insureds who had litigated and lost on the identical pollution-exclusion issue. Instead, such cases are concerned with the "'social value in the finality of litigation.'" *See Cincinnati Ins.*, 131 F.3d at 628 (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983)).

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[8]It is worth noting that in one sense, this court need never concern itself with one of its decisions 'opening the litigation floodgates' since a district court's decision does not have precedential authority. *See Howard v. Wal-Mart Stores, Inc.*, 160 F.3d 358, 359 (7th Cir. 1998).

The cases make clear that the principle of finality extends well beyond cases construing the Coal Act and looms as a heavy counter-balance to any policy arguments a Rule 60(b)(6) movant may make.

In *United States v. Keane*, 852 F.2d 199 (7th Cir. 1988), *cert. denied*, 490 U.S. 1084 (1989), the court discussed the social value of finality in litigation in the context of a criminal case:

> Everyone is entitled to a full and fair opportunity for litigation, and no one is entitled to multiple opportunities. The decision the second time around is not necessarily more accurate than the first and comes at great cost to legitimate interests in finality--not only the interests of the prevailing party but also the interests of the judicial system. Rules of preclusion induce parties to concentrate their energies and resources on getting things right the first time. The prospect of relitigating would reduce the effective stakes of the first case, leading to an erosion in accuracy. From a systemic perspective, time consumed relitigating one case subtracts from the time available to litigate others. Litigants must wait in a longer queue, receive less judicial attention, or both. It would not be possible to stop with two decisions; if hindsight shows the error of the first decision, it may show error of the second in turn. The high costs of multiple decisions in the same case have led the Supreme Court to conclude that a party does not get a second chance even if an intervening decision of that Court makes pellucid the error of the original decision. *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394 (1981). Given *Moitie*, there can

> be no doubt that if in a civil case Keane had been found liable for fraud and assessed $27,000 as damages, a later decision of the Supreme Court rejecting the reasoning used in his case would not have entitled him to a fresh adjudication.

Id. at 201-02 (citation omitted) (holding that the writ of error coram nobis is unavailable unless "the prisoner is [still] suffering civil disabilities unique to criminal convictions," and a fine and/or the reputational injury from having a conviction on the prisoner's record does not suffice).

And in *Norgaard v. DePuy Orthopaedics, Inc.*, 121 F.3d 1074 (7th Cir. 1997), the court elaborated:

> In *United States v. Keane*, . . . we held that a reinterpretation of existing law did not justify reopening the monetary aspects of criminal judgments (that is, fines). Only ongoing custody or future collateral consequences support post-judgment relief, we held. Collateral review has always been allowed more freely in criminal than in civil cases. If financial aspects of criminal judgments do not change when understanding of the law changes, it is hard to see why financial aspects of civil judgments should change. Even when imprisonment is at issue, most changes of law do not affect judgments that became final before the change occurred. It would be topsy-turvy, both historically and prudentially, to permit a change of law to upset a civil money judgment more readily than a criminal judgment, which affects liberty. Rule 60(b)(5) permits the revision of an ongoing decree, such as an injunction, when a prior judgment upon which it is based has been reversed or otherwise

> vacated, or it is no longer equitable that the judgment should have prospective application", which strongly implies that a money judgment (or a no-money judgment) is not to be upset just because the law on which it was founded has changed.

Norgaard, 121 F.3d at 1077 (citations omitted).

The landscape of *Cincinnati Insurance*, *Keane* and *Norgaard* shows the importance of finality in the law, especially when the only justification for reopening a final judgment is the recovery of money paid as a result of the judgment.[9] Plaintiffs offer nothing to rebut this caselaw. However, Plaintiffs do present three additional arguments in support of their overall argument that the "equities" support the granting of Rule 60(b)(6) relief in this case.

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[9]Plaintiffs argue at one point that there are "no issues of finality here" because the judgment in this case "was for declaratory relief and contains no money judgment." (Mem. of Pls. in Supp. of Their Mots. for Relief from J. Pursuant to Fed. R. Civ. P. 60(b)(6) at 12.) However, it is abundantly clear from Plaintiffs' briefs that the only reason they seek Rule 60(b)(6) relief is to pave the way for the recovery of the premiums they paid to the Combined Fund. If Plaintiffs were seeking Rule 60(b)(6) relief for the sole reason of obtaining the moral satisfaction that they had been correct in their litigation position, then their Rule 60(b)(6) motion could be rejected in far less space than is consumed by this Entry. *Cf. Keane*, 852 F.2d at 204 (holding that a defendant may not reopen a criminal case simply to eliminate a criminal conviction from his record and "bask in the satisfaction of having his position vindicated")

Plaintiffs argue that Rule 60(b)(6) relief is justified because they paid such a large amount of money to the Combined Fund before the *Eastern Enterprises* decision (collectively, just over $2.8 million). However, this hardly appears to be a principled method of determining Rule 60(b)(6) motions. What would be the threshold amount in any given Rule 60(b)(6) motion? For example, Princeton Mining Co. paid $1,165,333. Is the threshold $1,000,000? But Templeton Coal Co. paid $594,518; so is the threshold $500,000? But Sherwood-Templeton Coal Co. paid $34,453. In order for Plaintiffs' argument to include all of the Plaintiffs (and there is no indication that Plaintiffs intend anything different), the threshold must be "only" $34,453. And if the amount of money is to be a determining factor, then perhaps the court should consider the amount of money in relation to the party's net worth. In which case, perhaps an unsuccessful social security claimant is more worthy of past benefits after a subsequent change in the caselaw than any of the Plaintiffs here.

Plaintiffs next argue that relief is warranted because Congress has provided a method for the Combined Fund to obtain reimbursement of refunds the Combined Fund pays due to the *Eastern Enterprises* decision. However, this argument is similarly unpersuasive. First of all, as a factual matter, it appears that the Combined Fund is not entitled to reimbursement for any refunds of premiums paid before September 30, 1995 (the Coal Act became effective in 1993).[10] And even as to the refunds that would be

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[10]The Combined Fund makes this factual argument in its brief, *see* Mem. of Def. Trustees of the UMWA Combined Benefit Fund in Opp'n to Pls.' Mot. for Relief from J. at 27

reimbursed, simply because the reimbursement would come from a governmental entity does not mean that there is a lowered interest in finality or that the money somehow is less important than if it were to be paid from some other source. And finally, Plaintiffs have failed to demonstrate how the fact that the Combined Fund may obtain reimbursement for some refunded money is relevant to a Rule 60(b)(6) motion. *See Holland v. Virginia Lee Co.*, 188 F.R.D. 241, 256 (W.D. Va. 1999) (rejecting a similar argument: "[A]n effort to isolate alternative sources of revenue which would compensate for the payment of a refund does not help Virginia Lee's case here. The current fitness of the funding mechanism established by the statutory construct is simply not relevant.").

Finally, Plaintiffs' Rule 60(b)(6) motion is not the only such motion to be filed in the wake of *Eastern Enterprises.* Three courts have denied Rule 60(b)(6) relief to "super-reachback companies" who unsuccessfully challenged the constitutionality of the Coal Act and whose judgments became final before the Supreme Court's *Eastern Enterprises* decision, *see Lindsey Coal Mining Co. Liquidating Trust v. Apfel,* No. 94143 (W.D. Pa. August 4,1999); *Holland v. Virginia Lee Co.*, 188 F.R.D. 241 (W.D. Va. 1999); *Coltec Indus., Inc. v. Hobgood,* 184 F.R.D. 60 (W.D. Pa. 1999), while one court has granted Rule 60(b)(6) relief, *see Blue Diamond Coal Co. v. Shalala,* No. 3:93-CV473 (E.D. Tenn. November 4, 1998). Plaintiffs distinguish the cases denying Rule 60(b)(6) relief on the grounds that either the coal company did not petition the Supreme Court for certiorari

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(citing 30 U.S.C. Section 1232(h)), and Plaintiffs did not dispute it in their Reply brief.

(Lindsey Coal Mining Co.), or settled its claim before exhausting its appeals *(Virginia Lee Co., Coltec Industries)*.

By contrast, Plaintiffs argue that *Blue Diamond Coal*, wherein the court granted Rule 60(b)(6) relief, is the only truly analogous case to this one. Even if that were true, a decision from a fellow district court is only as persuasive as the reasoning it employs. *See, e.g., Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 532 (7th Cir. 1988). The court in *Blue Diamond Coal* relied upon four cases in granting the "super-reach back" company's Rule 60(b)(6) motion: *Gondeck v. Pan American World Airways, Inc.*, 382 U.S. 25 (1965); *Pierce v. Cook & Co., Inc.*, 518 F.2d 720 (10th Cir. 1975); *First American National Bank of Nashville v. Bonded Elevator, Inc.*, 111 F.R.D. 74 (W.D. Ky. 1986); and *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995).

The first two cases *(Gondeck* and *Pierce)* deal with "common disaster" situations in which different legal standards were applied to victims of the same automobile accident. In *McGeshick v. Choucair*, 72 F.3d 62 (7th Cir. 1995), the Seventh Circuit discussed *Gondeck*, and indicated that the "most probable" reading of the case is that it should be limited to "common disaster" situations:

> In determining the appropriate balance between these countervailing factors of correcting a judicial course of action that has proven to have been improvidently chosen and of preserving finality in judicial decision-making, courts have been guided by a variety of considerations. The Supreme Court has confronted the issue on two occasions. In *Gondeck v. Pan American World Airways*, 382 U.S. 25 ... (1965), the Court vacated its order denying certiorari and

> reversed the judgment under review when the plaintiff demonstrated that the Court of Appeals had erred in its interpretation of the applicable standard and that another Court of Appeals subsequently had applied the standard correctly in another case arising out of the same disaster. By contrast, in *Weed v. Bilbrey,* 400 U.S. 982 ... (1970), the Supreme Court declined to reopen an earlier disposition. After certiorari had been denied in *Weed,* the writ was granted in another case and the Court altered the law in a way that also would have benefitted the petitioner in *Weed.* Although the Court's action might possibly be explained by the unique nature of its discretionary certiorari review, it seems more probable that the Court decided to limit its abrogation of the finality doctrine to situations involving a common disaster.

Id. at 63-64. The court in *Blue Diamond Coal* does not mention *Weed,* although the "super-reach back" companies' situation appears to be much more analogous to the facts surrounding *Weed* than to the facts surrounding *Gondeck. Compare Weed,* 400 U.S. at 982-83 (Douglas, J., dissenting from denial of motion for leave to file petition for rehearing), *with Gondeck,* 382 U.S. at 26-28. Given the Seventh Circuit's discussion in *McGeshick,* and the fact that *Weed* seems to be more analogous to this case than *Gondeck,* this court declines to extend the reasoning of *Gondeck* to the instant case, which does not involve a "common disaster" situation.

The court in *Blue Diamond Coal* also relied upon *Pierce,* which is another "common disaster" case. In *Pierce,* the Tenth Circuit relied upon *Gondeck* in reaching its holding that Rule 60(b)(6) relief was justified. The court distinguished its prior decision in *Collins* (discussed above) in the following

manner: "*Collins* differs from the instant case in that there the decisional change came in an unrelated case. Here it came in a case arising out of the same accident as that in which the plaintiffs now before us were injured." *Pierce*, 518 F.3d at 723. As discussed above, *Collins* involved two separate constitutional challenges to the same provisions of the same statute. In this way, *Collins* is far more analogous to the present case than is the "common disaster" situation in *Pierce*.

The court in *Blue Diamond Coal* also relied upon *Pierce*, which is another "common disaster" case. In *Pierce*, the Tenth Circuit relied upon *Gondeck* in reaching its holding that Rule 60(b)(6) relief was justified. The court distinguished its prior decision in *Collins* (discussed above) in the following manner: "*Collins* differs from the instant case in that there the decisional change came in an unrelated case. Here it came in a case arising out of the same accident as that in which the plaintiffs now before us were injured." *Pierce*, 518 F.3d at 723. As discussed above, *Collins* involved two separate constitutional challenges to the same provisions of the same statute. In this way, *Collins* is far more analogous to the present case than is the "common disaster" situation in *Pierce*.

Furthermore, the Seventh Circuit has been somewhat critical of *Pierce's* holding. In *Norgaard*, 121 F.3d at 1078, the Seventh Circuit discussed *Pierce* in relation to *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995):

> One court of appeals has held that a change of law by a state court in litigation involving the same events as the federal case may permit reopening. *Pierce v. Cook & Co.*, 518 F.2d 720 (10th Cir. 1975) (en banc). No matter how persuasive a litigant's arguments, a federal court cannot alter or affect state law the way a state

> court may. A litigant whose adversary's choice of forum disables it from making a request for modification of state law--that is, a plaintiff whose case is removed to federal court, or a defendant haled into federal court initially--has a much better claim to use Rule 60(b)(6), if state law later changes in its favor, than do litigants such as the Norgaards. But even this claim is not strong enough, given *Plaut*. If Congress cannot tell a federal court to reopen a judgment in order to give the losing side the benefit of a change of law, neither may a state. Legitimate interests in finality also counsel against revision. Thus it can be no surprise that other circuits have not followed *Pierce*.

Norgaard, 121 F.3d at 1078. In light of *Norgaard*, and the fact that *Collins* is far more analogous to this case than is *Pierce*, this court declines to rely upon *Pierce*. This court also declines to rely upon *First American National Bank of Nashville* (cited by the court in *Blue Diamond Coal)*, for the reason that the sole case relied upon by the district court in reaching its holding is *Pierce*. *See* 111 F.R.D. at 75.

The final relevant case cited by the court *in Blue Diamond Coal* is *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743 (5th Cir. 1995). In *Batts*, the Fifth Circuit reversed a district court's granting of Rule 60(b)(6) relief, holding that the district court abused its discretion in opening a final judgment based upon a subsequent change in the law. However, in a footnote, the court noted that there are some situations in which a subsequent change in the law "may" constitute an extraordinary circumstance warranting Rule 60(b)(6) relief. One of the situations is "where the subsequent court decision is closely related to the case in question, such

as where the Supreme Court resolves a conflict between another circuit ruling and that case." *Id.* at 748 n.6 (citing *Ritter v. Smith*, 811 F.2d 1398, 1402-03 (11th Cir.), *cert. denied*, 483 U.S. 1010 (1987)).

The Supreme Court in *Eastern Enterprises* was not resolving a conflict between circuits--all of the courts of appeals that had considered the issue had upheld the Coal Act against constitutional challenges. *See Eastern Enterprises*, 524 U.S. at ----, 118 S. Ct. at 2144 n.4. More importantly, the facts of *Ritter* are very different--and far more exceptional--than the facts of this case.

In *Ritter*, the Eleventh Circuit held that the Alabama death penalty statute was unconstitutional and ordered the district court to grant a writ of habeas corpus if Alabama did not give the defendant a new sentencing hearing. On December 3, 1984, the district court gave Alabama until June 1, 1985 to resentence the defendant. However, on December 10, 1984, the U.S. Supreme Court granted certiorari in a case challenging the constitutionality of the same statute--*Baldwin v. Alabama*, 469 U.S. 1085 (1984). Before June 1, 1985, the *Ritter* district court granted the state's motion for extension of time to resentence the defendant because of the pending Supreme Court case. On June 17, 1985, the Supreme Court upheld the constitutionality of the Alabama statute. *See Baldwin v. Alabama*, 472 U.S. 372 (1985). Shortly thereafter, the state moved for Rule 60(b)(6) relief in *Ritter's* case, seeking to set aside the district court's order which conditionally granted the writ of habeas corpus. The district court granted the motion and the Eleventh Circuit affirmed. *See Ritter, 811* F.2d at 13991400.

In affirming the district court's grant of Rule 60(b)(6) relief, the Eleventh Circuit stated:

> Our investigation thus leads us to conclude that something more than a `mere' change in the law is necessary to provide the grounds for Rule 60(b)(6) relief. Several factors in this case, in addition to the fact of the change in the law, persuade us that the circumstances are sufficiently extraordinary to warrant relief under Rule 60(b)(6).
>
> A significant factor in this case is the fact that the previous, erroneous judgment of this court had not been executed. When a judgment has been executed a concomitantly greater interest in finality exists. This reasoning explains, in part, the result *in Collins* [*v. City of Wichita*, 254 F.2d *837* (10th Cir. 1958)]. The judgment in Collins was fully executed.
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> * * *
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> Similar reasoning can be seen when courts must deal with the effect a change in law has on a consent decree or permanent injunction. Such judgments typically have both past effects and future implications. Generally courts have refused to undo the past, executed effects of the judgments, but they have, almost uniformly, recognized that it would be unjust to give prospective effect to a judgment now known to be improper. ... However, once the judgment has been executed and its effects are no longer prospective, modification of the judgment ordinarily will be unavailable. Thus, the fact that the previous judgment of this court, though final, was

> unexecuted is a significant factor in the extraordinary circumstances favoring relief from the judgment in this case.

Id. at 1401-02 (citations omitted). Other factors that led the court to affirm the grant of Rule 60(b)(6) relief (other than the fact that the prior judgment had not been executed) included the "minimal delay between the finality of the judgment and the motion for Rule 60(b)(6) relief," and "considerations of comity" that are present when "[a] federal court's grant of a writ of habeas corpus upsets the finality of a state court judgment." *Id.* at 1402-03. A final factor cited by the court was the "close relationship" between *Ritter* and *Baldwin*--the U.S. Supreme Court granted certiorari in *Baldwin* for the express purpose of resolving the "significant conflict" between the Eleventh Circuit in *Ritter* and the Alabama Supreme Court in *Baldwin. See Baldwin,* 472 U.S. at 374. *Ritter* described this final factor as being analogous to the "common disaster" situation in *Pierce,* and again distinguished *Collins* on this ground. *See Ritter*, 811 F.2d at 1402-03.

In the present case, unlike in *Ritter,* there is no unexecuted judgment. This Rule 60(b)(6) motion does not concern any prospective effects of this court's judgment; the only issue that has been raised is the past monies paid by Plaintiffs to the Combined Fund. In addition, there was a greater delay between the judgment and the Rule 60(b)(6) motion in this case than in *Ritter* (four years versus nine months), and there are no considerations of comity present in this case. Finally, as discussed above, this case is more analogous to *Collins* than to *Pierce,* and further, the persuasive value of *Pierce* is diminished in this Circuit in light of *Norgaard.*

Therefore, after considering the legal underpinnings of the court's opinion in *Blue Diamond Coal,* this court is not persuaded that Rule 60(b)(6) relief is warranted in this case. And to the extent the differences between the plaintiff in that case and the Plaintiffs in this case are relevant, the differences militate against Rule 60(b)(6) relief in this case. The first factor listed by the court in *Blue Diamond Coal* that favored the granting of Rule 60(b)(6) relief was: "the amount of money involved (over Fourteen Million from a reorganized Chapter 11 debtor)." *Blue Diamond Coal Co. v. Shalala, No.* 3:93-CV-473, slip op. at 9 (E.D. Tenn. November 4, 1998). As discussed above, this court is aware of no authority indicating that the amount of money involved is a relevant factor in Rule 60(b)(6) motions--let alone that it should be entitled to great weight. But to the extent the amount of money is important, Blue Diamond Coal Co. paid far more money to the Combined Fund than any of the Plaintiffs here. Further, there has been no contention that any Plaintiff in this case is a Chapter 11 debtor or is otherwise the subject of bankruptcy proceedings.

In conclusion, while it is certainly understandable for Plaintiffs to feel as if they have been treated unfairly, Plaintiffs have nevertheless failed to demonstrate that sufficiently exceptional circumstances exist to overcome the strong policy favoring the finality of judgments. Therefore, Plaintiffs' Motion for Relief from Judgment is **DENIED**.

ALL OF WHICH IS ORDERED this 17th day of November 1999.

John Daniel Tinder, Judge
United States District Court